

APPEAL NO. 022048
FILED OCTOBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 22, 2002. The hearing officer determined that the respondent (claimant herein) had disability from December 20, 2000, through July 15, 2001, and that the appellant (carrier herein) was not entitled to recoupment for overpayment of benefits. The carrier appeals, contending that the evidence established that the claimant did not have disability at least after February 8, 2001, and it is entitled to recoup temporary income benefits paid from February 8, 2001, until July 15, 2001. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Disability is a question of fact. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

There was clearly conflicting evidence concerning disability in this case. The carrier points to evidence that the claimant was able to work with restrictions after February 8, 2001, and evidence that the claimant was actually working for his mother's realty company. The claimant and his mother testified that he did not work for the realty company until after July 15, 2001. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers'

Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. In the present case, the claimant's testimony supports the hearing officer's finding that he had disability until July 15, 2001. Here, the hearing officer's finding of disability is supported by the claimant's testimony as well as medical evidence of restrictions. Applying our standard of review, we find no grounds for reversal.

As the carrier's appeal of the recoupment issue hinges on its prevailing on the disability issue, we find no basis to reverse the hearing officer's resolution of the recoupment issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN RISK FUNDING INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge